

1 McGREGOR W. SCOTT
United States Attorney
2 KRISTI C. KAPETAN
Assistant U.S. Attorney
3 Federal Courthouse, Suite 4401
2500 Tulare Street
4 Fresno, California 93721
Telephone: (559) 497-4000
5
6
7

8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 REAL PROPERTY LOCATED AT 4697
14 LINGARD ROAD, MERCED, MERCED
COUNTY, CALIFORNIA, APN: 066-130-005,
15 INCLUDING ALL APPURTENANCES AND
IMPROVEMENTS THERETO,

16 Defendant,

17 _____
18 Mortgage Electronic Registration Systems, Inc.,
as Nominee For Countrywide Home Loans,
19 Inc.,

20 Claimant.
21

1:05-CV-00476 REC SMS

STIPULATION FOR EXPEDITED
SETTLEMENT AND ORDER THEREON

22 This stipulated settlement is entered into between the plaintiff United States of America and
23 claimant Mortgage Electronic Registration Systems, Inc., as Nominee For Countrywide Home Loans,
24 Inc. (hereinafter referred to as "claimant Countrywide"), by and through their undersigned counsel,
25 according to the following terms:

26 1. This is a civil forfeiture action of certain real property located at 4697 Lingard Road, Merced,
27 Merced County, California. APN: 066-130-005 (hereinafter the "defendant real property"), and more
28 particularly described as:

1 Lot 27 and all those portions of Lots 28, 29 and 30 lying North of the
2 North line of the parcel of land conveyed by Thomas T. Givens and Alice
3 M. Givens to Teodoro D. Dumpit and Mary L. Dumpit by deed dated
4 December 29, 1947 and recorded January 21, 1948 in Book 870, page
279, of Official Records, MAP OF GIVENS MISSION FIG TRACT, in
the County of Merced, State of California, as per plat recorded in Book
8 of Maps, pages 35 and 36, records of said County.

5 EXCEPTING THEREFROM that portion of said lots lying in strips of
6 land 60 feet wide and 40 feet wide conveyed by Thomas Thrift Givens to
7 Merced Irrigation District by deed dated July 2, 1923 and recorded
August 6, 1923 in Book 53, page 179, Merced County Records.

8 Assessors Parcel No.: 066-130-005.

9 2. The parties hereby stipulate that any violations of Title 21 U.S.C. § 881 involving the
10 defendant real property occurred without the knowledge and consent of claimant Countrywide.

11 3. Plaintiff agrees that upon the entry of a Final Judgment of Forfeiture forfeiting to the United
12 States all right, title, and interest in the defendant real property, and upon the sale of the defendant real
13 property, it shall pay claimant Countrywide, in escrow from the gross sales price, after payment of
14 outstanding taxes and expenses of custody and sale incurred by the United States Marshals Service, the
15 following:¹

16 a. All unpaid principal due to Countrywide in the original amount of \$130,000.00
17 pursuant to a Promissory Note dated April 8, 2004, and secured by a Deed of Trust dated April 8, 2004,
18 and recorded on April 16, 2004 as Instrument No. 2004023476, in the official records of Merced County,
19 California. As of June 30, 2005, the total amount due and owing under the note was \$123,876.45. This
20 number consists of principal due and owing in the amount of \$123,341.58, interest due and owing in the
21 amount of \$477.74, and miscellaneous fees and costs on the amount of \$57.13. Interest will continue
22 to accrue under the note at a rate of \$16.4737 per diem;

23 b. All unpaid interest at the contractual rate (not the default rate) under the above-
24 described note and deed of trust until the date of payment;

25 _____
26 ¹ If for any reason the defendant real property is not forfeited, e.g., because the United States
27 enters into a settlement with other claimants to forfeit money in substitution for the defendant real
property then this stipulation shall not have effect.

1 c. All unpaid casualty insurance premiums for the defendant real property from May 5,
2 2005 (date of posting of defendant real property) to the date of payment;

3 d. Reasonable attorney's fees not to exceed \$2,000.00; and

4 e. A total fee of not more than \$200 to process a beneficiary demand statement and to
5 record a reconveyance of the deed of trust.

6 f. The exact amount to be paid to claimant Countrywide shall be determined at time of
7 payment.

8 4. The payment to claimant Countrywide shall be in full settlement and satisfaction of any and
9 all claims by Countrywide to the defendant real property posted by the United States on or about May
10 5, 2005, and all claims resulting from the incidents or circumstances giving rise to this forfeiture action.

11 5. Upon payment, claimant Countrywide agrees to assign and convey its security interest to the
12 United States via recordable documents.

13 6. Claimant Countrywide releases plaintiff United States of America and its servants, agents,
14 and employees and all other public entities, their servants, agents, and employees, from any and all
15 liability arising out of or in any way connected with the posting or sale of the defendant real property.
16 This is a full and final release applying to all unknown and unanticipated injuries, and/or damages
17 arising out of said posting, forfeiture, or sale, as well as to those now known or disclosed. The parties
18 to this agreement waive the provisions of California Civil Code § 1542 which provides that a general
19 release does not extend to claims which the creditor does not know or suspect to exist in its favor at the
20 time of executing the release, which if known by it must have materially affected the settlement.

21 7. As a part of this settlement, claimant Countrywide agrees not to pursue against the United
22 States any other rights they may have under the promissory note and deed of trust including, but not
23 limited to, the right to initiate a judicial or non-judicial foreclosure action.

24 8. Claimant Countrywide agrees to notify the U.S. Attorney and U.S. Marshals Service at the
25 end of the first payment cycle in which a payment is not made under the terms specified in the note.
26 Claimant further agrees to join any government motions for interlocutory or stipulated sale of the
27
28

1 defendant real property and any motions to remove occupants from the property who fail to abide by the
2 terms of an occupancy agreement, within ten (10) days of claimants' receipt of the motion(s).

3 9. Claimant Countrywide understands and agrees that by entering into this Expedited Settlement
4 of their interest in the defendant real property, they waive any rights to further litigate against the United
5 States their interest in the defendant real property and to petition for remission or mitigation of the
6 forfeiture. Unless specifically directed by order of this Court, claimant Countrywide is hereby excused
7 and relieved from further participation in this action.

8 a. No final judgment shall be entered in this action inconsistent with or adverse to any
9 provisions of this Stipulation, and to the extent any final judgment entered in the action is inconsistent
10 with or adverse thereto, such order shall be void as against Countrywide.

11 10. Claimant Countrywide understands and agrees that the United States reserves the right to
12 void this Expedited Settlement agreement and terminate the forfeiture action at any time for legal
13 reasons or within ninety (90) days after the date of this agreement for economic reasons.

14 11. The parties agree to execute further documents, to the extent necessary, to convey clear title
15 to the property to the United States and to further implement the terms of this settlement.

16 12. The terms of this settlement agreement are contingent upon forfeiture of the defendant real
17 property to the United States and the Court's entry of a Final Judgment of Forfeiture. Further, the terms

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 of this settlement agreement shall be subject to approval by the United States District Court and any
2 violation of any terms or conditions shall be construed as a violation of an Order of the Court.

3
4 DATED: 4/24/06

/s/ Kristi C. Kapetan

KRISTI C. KAPETAN

Assistant United States Attorney

5
6
7 DATED: April 18, 2006.

/s/ Lindsay J. Nichols

Lindsay J. Nichols

Attorney for Claimant Mortgage Electronic
Registration Systems, Inc., as nominee for
Countrywide Home Loans, Inc.

10 **ORDER**

11 This Stipulated Expedited Settlement is hereby APPROVED.

12
13 DATED: May 3, 2006

/s/ ROBERT E. COYLE

ROBERT E. COYLE

United States District Judge